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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALVARO G., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

B152690

(Super. Ct. No. CK38323)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 39.1B.) Diana M. Wheatley, Judge. Petition denied in part; dismissed in part.

Marilyn M. Mordetzky for Petitioner Alvaro G.

Deborah Blanchard for Petitioner Guadalupe G.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Doraine F Meyer, Senior Deputy County Counsel, for Real Party in Interest.

Law Offices of Lisa E. Mandel, and David Estep for the child Luis G.

Law Offices of Anne E. Fragasso, Cameryn Schmidt, and Molly Nealson, for the child Julio G.

I. INTRODUCTION

Guadalupe G., the mother, challenges an order of the juvenile court terminating family reunification services and setting a hearing to consider the termination of her parental rights. (Welf. & Inst. Code, § 366.26.)¹ Alvaro G. challenges an order denying his motion to vacate jurisdictional, dispositional, and paternity findings. We deny Guadalupe's petition. We dismiss Alvaro's petition.

II. FACTS AND PROCEDURAL HISTORY

Guadalupe is the mother of Luis G. (born February, 1991), Karina G. (born June, 1996), Jose G. (born June, 1998), and Julio G. (born October, 1999). On June 23, 1999, the Department of Children and Family Services (the department), detained all four children in response to information provided by a nurse at Luis's school. The nurse reported that Luis had belt marks on his back, legs, arms, and stomach. Luis stated the injuries were inflicted by Alvaro. During the initial investigation, the mother was uncooperative with a department social worker. The mother told the department case worker several different stories about how Luis sustained his injuries. Then the mother admitted she believed Alvaro hated Luis. According to the mother, this was because Luis was not the natural child of Alvaro. The mother revealed that each child had a different father and she was pregnant by yet another man. The mother also said that Alvaro became

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

violent when he drank, which was daily and focused his violence on Luis. She once reported the beatings to the police and Alvaro ““stayed in jail for two months.”” The mother expelled Alvaro from her home “only after the last of many incidents” and said she believed he had left the country for Mexico.

The department filed a section 300 petition on June 25, 1999. An amended petition was filed on August 12, 1999. On August 12, 1999, the juvenile court sustained the petition under section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (j) (abuse of sibling). The court directed the department to provide family reunification services for the mother only.

Over the next two years, the mother participated in a variety of reunification programs including parenting classes, individual counseling, and domestic violence education. The mother had monitored visitation with the children weekly. When Julio was born in November 1999, the department detained him. The decision to detain Julio was based on reports that the mother continued to live with and maintain a relationship with Alvaro. Although the mother initially denied living with Alvaro, she later admitted doing so and said she continued to see him because “he was going to try to get his children back.” She also admitted to lying about Alvaro’s whereabouts to protect him from being arrested. By living with Alvaro, the mother violated a restraining order that she herself had obtained.

The court gave the department the discretion to liberalize the mother’s visitation and in March 2000, she was allowed overnight visits with the children. Luis reported that during the first overnight visit, the mother allowed Alvaro into the home and told the children not to say anything about it. This was in direct violation of the court’s order that Alvaro not be permitted to visit the children until he contacted the department. The mother lied about having seen Alvaro. The mother said Luis was lying because he was “trying to make her look bad” Once again, the department restricted the mother to monitored visitation with unmonitored contact only in the children’s foster home.

The court returned the children to the mother’s care at the 18-month hearing in April 2001. (§ 366.22.) The court found the department had not met its burden of showing

the children were at a substantial risk of harm if returned to mother. The court ordered the department to continue providing family preservation services to the mother.

A short time later, the mother reported that Luis was engaging in aggressive behavior towards his siblings and destructive conduct in the home. The mother said Luis was “too much for her to handle.” The department detained Luis and placed him in foster care, but the other children remained with mother.

In early June 2001, Julio’s foster mother went to the mother’s home to visit him. She saw a man eating pizza at the table. When the man saw her, he ran and hid in the bathroom. The children later told the department social worker that Alvaro had visited the home, brought the children pizza, and fled through the bathroom when Julio’s foster mother appeared at the door. Alvaro initially said he had not gone near the home, but then changed his story to say that he had brought pizza to the children but had not entered the residence. The mother initially denied Alvaro had visited but then changed her story to conform to his explanation. The mother knew Alvaro was to have only monitored visitation. Based on this incident, the department detained the children and filed a supplemental petition. (§ 387.) The court sustained the section 387 petition on August 2, 2001. On August 24, 2001, the court terminated the mother’s family reunification services and set a permanent placement hearing for December 20, 2001. (§ 366.26.) The court also denied two section 388 petitions filed by Alvaro.

III. DISCUSSION

A. The Mother’s Petition.

This petition is taken from an order terminating family reunification services and setting the matter for a permanency planning hearing. However, the ruling that gave rise to the termination of family reunification services was an order sustaining a supplemental petition. (§ 387.) We review these orders for an abuse of discretion. (*Carolyn R. v.*

Superior Court (1995) 41 Cal.App.4th 159, 166-167; *In re Barbara P.* (1994) 30 Cal.App.4th 926, 933.)

No abuse of discretion occurred when the trial court concluded the children were in substantial danger if returned to mother's care. Alvaro had a history of domestic violence brought on by drinking alcohol which he did on a daily basis. There was no evidence as to how much, if any, progress he had made in conquering his alcohol and drug problems. The mother admitted she was unable to protect herself or Luis from Alvaro's abuse. Despite court orders that prohibited Alvaro from having any visits with the children until he contacted the department and the fact that mother herself had obtained a restraining order to keep him away from her home, she nonetheless allowed him to visit the children each time they were placed in her care. This amounted to unmonitored visitation which the court had prohibited. Throughout the reunification period, the mother lied to the department about Alvaro's whereabouts, thereby helping him avoid the court's jurisdiction. The mother was not able to protect her remaining children from 10-year-old Luis, even after participating in almost two years of reunification services. The mother's naïve view that her children were safe with Alvaro because he had attended classes for a few months further supports the court's ruling.

B. Alvaro's Petition.

Alvaro challenges the respondent court's August 24, 2001, order denying his two section 388 petitions, in which he sought to set aside jurisdictional and dispositional findings on the ground he never received notice of the proceedings. The order is directly appealable. (*Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1068; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1834.) Alvaro filed a notice of appeal on September 5, 2001. But on November 30, 2001, Alvaro filed a request for dismissal of the appeal. The appeal was dismissed shortly thereafter. (*Alvaro G. v. Department of Children and Family Services* (Dec. 3, 2001, B152835 [nonpub. order].)

Further, even if he sought to do so, the father could not challenge the order setting the section 366.26 hearing. Rule 39.1B of the California Rules of Court provides for the filing of a petition for extraordinary writ “to challenge the findings and orders of the juvenile court in setting a hearing under section 366.26.” (Cal. Rules of Court, rule 39.1B(a)(2).) Dependency appeals are subject to Code of Civil Procedure section 902, which limits appeals to “aggrieved parties.” (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 260-261.) To be an aggrieved party, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision. A nominal interest in or remote consequence of the ruling does not satisfy this requirement. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737; *In re Carissa G.*, *supra*, 76 Cal.App.4th at p. 734.) The Court of appeal has held: “Standing to appeal is jurisdictional. [Citation.]” (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703; accord *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541.) Thus, for example, a parent cannot challenge the termination of parental rights at a section 366.26 hearing on the ground that the juvenile court failed to investigate or resolve the question of placing the child with a relative. (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1807-1808 [father lacks standing to appeal termination of his parental rights on grounds that he was denied contested hearing on placement of child with sibling disposition]; *In re Gary P.* (1995) 40 Cal.App.4th 875, 876-877 [mother lacks standing to appeal termination of her parental rights on grounds that severed child’s ties with maternal grandmother]; see *In re Vanessa Z.*, *supra*, 23 Cal.4th at pp. 260-262 [father may not appeal order denying his relatives de facto parent status because his rights are not affected].) The juvenile court never has made a finding that Alvaro was the father of any of the children. Alvaro has never subjected himself to the juvenile court’s jurisdiction. His sole role in this case was that of a person who horribly beat a child and refused to obey court orders directed at the mother. He has no standing to challenge the juvenile court’s order setting a 366.26 hearing. Because he has no standing, his petition is dismissed.

IV. DISPOSITION

The petition of Guadalupe G. is denied. The petition of Alvaro G. is dismissed.
Pursuant to California Rules of Court, rule 24(d), this opinion is made final forthwith.

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TURNER, P.J.

We concur:

GRIGNON, J.

MOSK, J.